IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1956 OF 2001

Pramod Prabhakar Kulkarni
r/o. At & Post: Kumbhargaon
Tal.:Patan, Dist.: Satara ... Petitioner

V/s.

1. Balasaheb Desai Sahakari Sakhar
Karkhana Ltd., a co-op. Sugar factory,
having its factory at Daulatnagar
Tal.:Patan, Dist.:Satara

2. Mr..S. Bhadange
Member, Industrial Court, Satara ... Respondents

Mr.A.V. Bukhari for Petitioner
Mr.L.M. Acharya for Respondent No.1

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **AUGUST 3, 2005**

ORAL JUDGMENT:

. This Petition challenges the order of the Appellate Court constituted under the Bombay Industrial Relations Act (BIR Act). The Appellate Court has allowed the appeal filed by respondent No.1 and has dismissed the application of the Petitioner filed under section 78 r/w section 79 of Act. The facts giving rise to the present petition are as follows:

The Petitioner was employed with Respondent No.1 (for

short, hereinafter referred to as ‘employer’) which is a cooperative sugar factory engaged in the manufacture of sugar and allied products. He was employed as a clerk from 1.12.1987. On 6.5.1992, his services were terminated. Aggrieved by the termination of his services, the Petitioner approached the employer through his advocate, by letter dated 25.5.1992. Since his demand was not acceded to by the employer, he filed an application under section 78 r/w 79 of the Bombay Industrial Relations Act. His application was opposed by the employer. Evidence of the Petitioner and the time-keeper of the employer was led. The Labour court, after recording evidence, by its judgment and order dated 12.8.1999 allowed the petitioner’s application. The employer was directed to reinstate the Petitioner with continuity of service and full backwages.

2. The employer preferred an appeal under section 84 of the Bombay Industrial Relations Act. The main contention raised was that the approach notice given by the Petitioner was not in accordance with section 42(4) of the BIR Act since it was signed by his advocate. The appellate Court accepted this submission of Respondent No.1 and set aside the order of the Labour Court. The Petitioner, therefore, preferred a writ petition impugning the order of the appellate Court. This writ

petition, being Writ Petition No.824 of 2000 was heard and disposed off on 19.8.2000 by this Court, setting aside the order of the appellate Court. The appeal was remanded to the Industrial Court for being heard afresh. The Industrial Court after remand has allowed the appeal and dismissed the application. The Industrial Court was of the view that the Petitioner could not claim that there was a breach of the provisions of section 25F of the Industrial Disputes Act when the employer-Karkhana was covered by the BIR Act. It is only on this ground that the appeal has been allowed. Although the employer had contended in its appeal that the Petitioner had been appointed on an ad-hoc basis and, therefore, was not entitled to permanency, the Industrial Court has not considered the issue.

3. Mr.Bukhari, learned Counsel for the Petitioner, submits that the finding of the appellate Court is wholly erroneous since it is a well settled position of law that when the provisions of a specific act in respect of labour litigation does not mention or provide for retrenchment, lay-off, etc. one has to take recourse to the provisions of the Industrial Disputes Act. He submits that the trial Court has already come to the conclusion on the basis of the evidence on record that the Petitioner had been regularised as a clerk.

There was no question of him being appointed on ad-hoc basis as submitted on behalf of the Respondent. In fact, the written statement filed on behalf of the respondent indicates that he was working as a clerk from 1.2.1987 to 6.5.1993 and was drawing Rs.25/- per day.

4. Mr.Bukhari relies on the judgment of the Supreme Court in the case of *Sawatram Ramprasad Mills Co. Limited, Akola v/s. Baliram Ukandaji & Anr.*, **1966 I LLJ 41** which confirmed the judgments of this Court in support of his submissions. He further relies on the judgment of the Supreme Court in the case of *Krishna District Cooperative Marketing Society Ltd. v/s. N.V. Purnachandra Rao & Ors.,* **1987 II LLJ 365** and the judgment of the Labour Appellate Tribunal of India in the case of *National Art Silk Mills Ltd. v/s. Mill Mazdoor Sabha and Ors*., **1954 I LLJ L.A. Tribunal 678.**

5. In the case of *Sawatram (supra),* the Supreme Court considered a case where the Petitioner-Mill was covered by the Central Provinces and Berar Industrial Disputes (settlement) Act, 1947. The workers had claimed certain compensation by filing applications under 33-C(1) of the Industrial Disputes Act. The Mills objected on various grounds, including that the application under section 33-C(1) was incompetent since

the Mills were covered under Central Provinces and Berar Industrial Disputes (settlement) Act. The Supreme Court while considering the provisions of both the Acts has held that compensation payable would be only under Chapter V-A of the Industrial Disputes Act. The workmen were entitled to file applications under 33-C(1) but before the Labour court to realise the money due from the employer under Chapter V of the Industrial Disputes Act. The contention on behalf of the Mills that the Industrial Disputes Act does not apply as the Central Provinces and Berar Industrial Disputes (settlement) Act applies has been negatived. The Supreme Court held thus:

> .... By one argument the application of he Industrial Disputes Act is sought to be evaded and by the second the Central Provinces and Berar Industrial Disputes (Settlement) Act is sought to be applied. We shall examine these two arguments in the same order. The attempt to oust the Central Act is based upon S.31 of the 1956 (Amendment) Act and the opening part of S.25J. Section 31 can have no application because S.33C has been included for the purpose, among others, of enabling the workmen to claim any money due from their employers under the provisions of Chap. V-A. This is expressly so stated in that section. Chapter V-A is the only chapter in which there is provision regarding lay-off or compensation for lay-off. The Central Provinces and Berar Act contains no provision either for the recovery of money or for compensation for lay-off. It is thus obvious that if a workman has a claim for lay-off, it can only come up for decision under the Industrial Disputes Act, 1947 and, indeed, S.25J(2) says so in express terms. The attempt

> to keep out the provisions of the Industrial Disputes Act particularly Chap. V-A and s.33C, must therefore, fail. The next attempt, namely, that the Central Provinces and Berar Act applies, is also ineffective. It is pointed out that the preamble of the Central Provinces and Berar Act shows that it was an Act for the promotion of peaceful and amicable settlement of industrial disputes by conciliation and arbitration, that "industrial dispute" means any dispute or difference connected with an industrial matter arising between an employer and an employee or between employers or employees and that "industrial matter" means matter relating to pay, wages, reward, etc. It is submitted, therefore, that the dispute must come under the Central Provinces and Berar Act because of S.31 of the 1956 (Amendment Act) and S.25J of the 1953 (Amendment) Act already quoted. The argument is the last one in another form. This argument is fallacious at the very start, because lay-off and compensation for lay-off are to be found only in Chap.V-A of the Industrial Disputes Act, 1947. There is no mention of lay-off or compensation for lay-off as one of the matters over which the Central Provinces and Berar Act has any jurisdiction. Next, even if Ss.31 and 25J save the application of the Central Provinces and Berar Act, they do so subject to the condition that question of lay-off must be decided in accordance with Chap.V-A and S.33C clearly provides that a dispute for any money due under Chap.V-A has to go before the appropriate Government or its delegate. here the delegate is the second labour court, Bombay. The argument that this controversy is wrongly (sic) before the second labour court, Bombay is, therefore, entirely erroneous and must be rejected.

6. In the case of *Krishna District Co-op. Marketing Society Ltd.* (supra), the Apex Court was dealing with a question as to whether the rights of a workman under Chapter V-A of the I.D. Act can be enforced by a workman by filing an appeal under section

41 of the Andhra Pradesh Shops and Establishment Act. The Apex Court has taken a view that such rights can be decided under the Andhra Pradesh Shops and Establishment Act and a reference under the I.D. Act was not necessary.

7. Similarly, the Labour Appellate Tribunal in the case of National Art Silk Mills (supra) was specifically given jurisdiction under the BIR Act and in respect of compensation under 25F, 25G and 25J of the I.D. Act. The Tribunal held that none of the provisions of the BIR Act exclude the jurisdiction under the provisions of the I.D. Act in relation to the retrenchment, lay-off, etc.

8. There is no dispute that Respondent No.1 is an industry covered by the BIR Act. There is also no dispute that it is a seasonal establishment. However, there are no provisions in the BIR Act relating to retrenchment, lay-off, payment of closure compensation, etc. covered under Chapter V-A of the Industrial Disputes Act. In such circumstances, the provisions of Chapters V-A and V-B of the Industrial Act must be complied with prior to effecting a lay-off, retrenchment, closure, etc.

9. A perusal of the BIR Act would indicate that the Act does not provide for retrenchment or lay-off. It is therefore necessary for an undertaking covered by the BIR Act to comply with the provisions of section 25F, 25G, 25J and 25H and other provisions of Chapter V-A of the I.D. Act. If there are more than 100 workmen employed, the employer must ensure that the provisions of Chapter V-B are not breached, although the establishment is governed by the BIR Act. An employee working in an establishment governed by the BIR Act can assert his right to the amounts and preconditions stipulated in Chapter V-A and V-B of the ID Act through the provisions of the BIR Act. Any breach of the provisions of these Chapters can be agitated byan employer under section 78 r/w section 79 of the BIR Act. Such an employee can also file claim under section 33-C(2) of the ID Act if he only claims the amount due to him.

10. Apart from this, section 25J of the ID Act reads thus:

> 25J. Effect of Laws inconsistent with this Chapter.- 1) The provisions of this Chapter shall have effect notwithstanding anything inconsistent therewith contained in any other law including standing orders made under the Industrial Employment (Standing Orders) Act, 1946:

> Provided that where under the provisions of any other Act or rules, orders or notifications issued thereunder or under any standing orders or any award, contract of service or otherwise, a workman is entitled to benefits in respect of any matter which are more favourable to him than those to which he would be entitled under this Act, the workman shall continue to be entitled to the more favourable benefits in respect of that matter, notwithstanding that he receives benefits in respect of other matters under this Act.
>
> (2) For the removal of doubts, it is hereby declared that nothing contained in this Chapter shall be deemed to affect the provisions of any other law for the time being in force in any State in so far as that law provides for the settlement of industrial disputes, but the rights and liabilities of employers and workmen in so far as they relate to lay-off and retrenchment shall be determined in accordance with the provisions of this Chapter.

Therefore, section 25J stipulates that the provisions of Chapter VA would have effect notwithstanding any other law including the BIR Act. Subsection (2) clearly provides that Chapter V-A is deemed to have effect with respect to rights and liabilites of employers and workmen in so far as they relate to lay-off and retrenchment. In the present case, undisputedly, the right of the Petitioner to receive retrenchment compensation as a precondition to the termination of his services cannot be denied on the specious ground that the establishment is covered by the BIR Act.

11. The evidence led before the Labour Court

indicates that the Petitioner was employed on a regular basis for five years prior to his termination. He worked as a clerk on a daily wage rate. The Labour Court has rightly concluded that the Petitioner was an employee in regular service and had been terminated from service, orally, without complying with the provisions of section 25F. The petitioner was not given any notice prior to terminating the services nor has he paid retrenchment compensation required under the Act. In such circumstances, the Labour Court has rightly concluded that the Petitioner was entitled to the relief claimed.

12. The contention raised by the Respondent in its Appeal that the Petitioner was employed on an ad-hoc basis and is therefore not entitled to permanency is an afterthought. The written statement filed before the Labour Court is silent on this aspect. In fact the Respondent has denied the master-servant relationship between it and the Petitioner.

13. Rule made absolute accordingly. No costs.